* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st DECEMBER, 2021

IN THE MATTER OF:

\+ **BAIL APPLN. 2477/2021**

ATUL AGGARWAL ..... Petitioner

Through Mr. Colin Gonsalves, SeniorAdvocate with Mr. Siddharth Seem, Advocate

versus

DIRECTORATE OF REVENUE INTELLIGENCE ..... Respondent

Through Mr. Satish Aggarwala, Sr. SPP with Mr. Jasneet Jolly, Advocate

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner seeks regular bail in SC No. 7369/16 (old SC No. 47A/12 of 2012) registered by the Directorate of Revenue Intelligence (*hereinafter,* "DRI") for offences punishable under Sections 9A, 21, 23, 25A of the Narcotics Drugs and Psychotropic Substances Act, 1985 (*"hereinafter,* "NDPS Act").

2. Facts, in brief, leading to the present petition are as follows:

a) Intelligence was received that a Delhi-based syndicate was engaged in drug trafficking by way of concealment in export consignments, and that one export consignment containing contraband drug was lying at Air Cargo Complex, New Delhi, and was scheduled to be exported on 18.07.2012 to Khairoi Nizam Hasim Panang, Malaysia, under AWB No. 618-28211901

dated 16.07.2012 in the name of M/s. Sagar Impex. The intelligence further indicated that the contraband goods were concealed in various handicraft items like ladies' purse, Heena powder, imitation jewellery etc.

b) On examination, eight corrugated boxes were found in three pallets. 24 boxes found were removed from the pallets and on weighment, huge variation was noticed in the weights of other cartons and cartons bearing nos. 18-21. Each carton was found to contain 38 cloth bags with each weighing 1.02 kgs and having the markings of Neha Rachni Mehendi. On opening these bags, a white colour crystal powder, which appeared to be ketamine, was found inside carton nos. 19, 20 and 21. The net weight of powder in 38 bags of box no. 19 was found to be 37.980 kgs, in 38 bags of box no. 20 was found to be 38.000 kgs, and in 38 bags in box no. 21 was found to be 38.000 kgs. Therefore, the total net weight of white crystal power found was 151.980 kgs.

c) In absence of any licence or transport authority, the recovered white crystal powder weighing 151.980 kgs was seized under the NDPS Act with all its packing material and other goods used for concealment of the ketamine. Representative samples in triplicate of 10 grams each from the seized ketamine were drawn. The goods received from the other 20 corrugated boxes were repacked in their original packing and were sealed in a manner that the goods could not be removed without breaking/tampering the seal. The packing material was also sealed.

d) Consequent to the recovery, search was conducted at the

premises of the alleged syndicate on 19.07.2012, and statements of Paramjit Singh Gulati and the Petitioner herein were recorded on 19.07.2012 and 20.07.2012, respectively under Section 67 NDPS Act.

e) In his statement under Section 67 NDPS Act, Paramjit Singh Gulati stated that he worked as a hawala operator between Delhi and Jallandhar. He stated that he was introduced to one Vicky by an insurance agent – Puneet, who offered him a deal to send him ketamine from Delhi to Canada through air cargo. It is stated that Gulati accepted the offer and contacted his old friend, Goldy, for forwarding and Customs clearance. It is stated that Goldy introduced him to the Petitioner herein who is a Customs House Agent (CHA). It is stated that the Petitioner herein agreed to be a part of the deal and it was decided that the contraband would be, provided by Paramjit to the Petitioner herein at his house and after packing the same, it was to be exported. It is stated that the export documents were to be provided by the Petitioner herein, and for his assistance, the Petitioner herein was paid a sum of Rs.3,00,000/- per consignment. He further stated that he had two godowns one at G-41 (Basement) Bali Nagar, New Delhi - 110015 and the other at Khasra No. 755/2/1 Mundka Village, Delhi-110141. He stated that he used his Mundka godown for storage of solvents like rosewater, butane and ethyl acetate, and contraband substanceS like ketamine. He further stated that he used to dissolve ketamine in solvents like rosewater, butanol and ethyl acetate so that a homogenous solution of ketamine with

these solvents could be prepared and exported without being caught by Government authorities like Customs. He stated that one dissolved solution of Ketamine with buranol was sent by him through ICD Patparganj in a 20-feet container in June 2012 for which the Petitioner herein helped him in transporting the said consignment. He also stated that one Paramjeet Singh @ Chotu actively participated in illicit trafficking of Ketamine and other contraband substances. He stated that Chotu used to deliver the procured the contraband substances to the Petitioner herein. He accepted the panchnama relating to the 151.980 Kgs of Ketamine which was recovered and seized at Air Cargo Complex, IGI Airport, New Delhi. He stated that the seized contraband was procured by him from one Pehalwan and the consignment was packed in gunny bags and was kept in his godown at 755/2/1 Mundka village, Delhi-41 and on the next day the consignment was sent to the Petitioner herein at his Kundan Nagar godown through Chotu. He stated that the consignment was packed in pouches and were marked as 'Neha Rachni Mehndi'. He stated that the packing was done at A-36, Kundan Nagar by the Petitioner herein and Chotu. He stated that the petitioner herein had arranged for concealing material like Mehndi pouches, imitation jewellery, bangles, bindis, and the consignment was concealed with these materials.

f) Statement of the Petitioner herein under Section 67 of the NDPS Act was recorded on 20.07.2012 wherein he stated that in the year 1996-97, he joined United Cargo where was engaged in

cargo clearance. He stated that he worked at United Cargo for 2-3 years and thereafter he joined M/s. Rahat Cargo P. Ltd. at Patel Nagar, where he worked for 2-3 years. He stated that thereafter he took a CHA firm, M/s BO Cargo Movers, on rent of Rs.5000/-per month. He stated that he used the CHA firm till 2006 for clearance of export cargo through PPG CFS Delhi. He stated that one Kulwinder Singh @ Goldy, who earlier used to work with him in the freight forwarding business, introduced him to Paramjeet Singh Gulati, who told him that he exported various narcotic substances like Ketamine, Hashish, etc. He stated that he joined Paramjeet Singh Gulati in exporting narcotic substances. He stated that Paramjeet Singh Gulati asked him to make arrangements for export of various narcotic substances, including Ketamine, Hashish etc, by arranging freight forwarding and custom clearance at the port of export in Delhi. He stated that Paramjeet Singh Gulati used to send Chotu with the narcotic substances that were to be exported and also instructed him to hand over genuine packets which were meant for export to Chotu who would conceal the narcotic drugs either in the packets provided by him or would substitute some of the packets with packets of similar packing containing narcotic drug like Ketamine, Hashish etc. He stated that Paramjeet Singh Gulati used to pay him Rs.2 lakhs to Rs.3 lakhs per shipment of up to 100 Kgs. of Ketamine. He stated that his role was to arrange concealing material, their packaging with Ketamine, their transportation up to final destination and Customs clearance. He

stated that he would export consignment containing Ketamine to the address of the buyers which was provided to him by Paramjeet Singh Gulati. He stated that he would arrange firm and IEC code for export of various narcotic substances of Paramjeet Singh Gulati. He stated that for clearance he hired one Sanjay who charged him Rs.40,000/- per consignment in addition to the actual expenses like air freight, terminal Charge, NOC Charges, agency Charges, CMC, etc. He stated that all the payments were made to him in cash and Paramjeet Singh Gulati used to deliver the consignment of Ketamine through Chotu at his godown situated at A- 36, Kundan Nagar, Delhi-92. He stated that in the past, they had exported more than ten consignments containing a total of more than 1000 Kg of Ketamine. He stated that he received a payment of Rs 2.5 to 3.0 lakhs for each consignment. He also stated that he also arranged for export of dark coloured bricks of Hashish weighing in excess of 1 Kg wrapped in plastics and concealed in a consignment of handicrafts items. He stated that the consignment of 151.980 kgs of Ketamine seized from Air Cargo Complex at IGI Airport at New Delhi on 18/19.07.2012 was booked by him through one Parwej Ansari of Star Cargo Movers of Mahipalpur, New Delhi.

g) On 03.09.2012, statement of one Raju Gupta, S/o Shri R.N Gupta, Sales executive of M/S DelEx Cargo India Pvt. Ltd. 1110, having its officer at 11th floor, Hemkunt Chambers, 89, Nehru Place, New Delhi, was recorded under section 67 of NDPS Act wherein he stated that in August 2011, the Petitioner herein had

approached their company for clearance of one export consignment of M/S Shiv Jyoti Sales Corp. declared to be handicraft items, Heena Powder and incense powder & stick which was consigned to Surinder Singh Dhillon, Vancouver Canada. He stated that since they did not have their own CHA licence, the work relating to the export clearance of the said consignment was handed over to M/s Clare Freight India Pvt. Ltd. He stated that the said consignment was cleared under S/B No. 5057802 dated 19.08.2011 AWB No. 01476730636 dated 19.08.2011. He stated that the payment in respect of the said consignment was received through cheque, but as the cheque was not proper, the Petitioner herein paid the said amount in cash. He further stated that during November 2011, the Petitioner herein once again approached their office for clearance of export consignment of Readymade Garments of M/s R.J. Exports consigned to M/s Meralin Procures SDN DND, Malaysia. He stated that the said consignment was delivered under three shipping bills, No. 5947518, 5947554 & 5947558, all dated 21.10.2011 and, DelEx House B/L no. ZIM-DEL/TKL/00189/11-12 dated 09.11.2011 and Master BA No. 21M-DEL-RKL/0152/11 dated 09.11.2011. The payment of Rs. 41,102/- towards sending the export consignment was received from the Petitioner herein through a Cheque bearing No. 000003 dated 30.11.2011 issued from his own company M/s Signature 360. He further stated that during December 2011, the Petitioner herein once again approached their company for clearance of

export consignment of mix food items to be exported by M/s. Sager Impex which was consigned to M/s Shri Ganesh Net, Hong Kong, this consignment was cleared under shipping bill No. 6556767 dated 07.12.2011, DelEx House B/L no.OLX/DEVHKG/00206/11-12, dated 14.11.2012 and Master B/L no. WSAA11-D/HKD/0478, dated 26.12.2011. The bill amount of Rs.45,271/- in respect of the said consignment was raised on M/s Signature 360 which was received through cheque No.000005 dated 15.01.2012. He further stated that during the month of June 2012, the Petitioner herein approached their company for export of three consignments.

h) The Petitioner was arrested on 20.07.2012 wherein his statement under Section 67 of the NDPS Act was recorded. It is stated that the said statement was retracted by the Petitioner herein on 04.08.2012 before the Ld. Special Judge when the Petitioner was produced for remand.

i) The Petitioner filed an application for bail which was rejected by the learned ASJ (South) Saket Courts *vide* Order dated 17.08.2013.

j) Charges were framed on 15.11.2014.

k) The Petitioner herein then approached this Court by filing an application for grant of bail, being Bail Application No. 2149/2013. The same was rejected *vide* Order dated 30.06.2015. The Petitioner thereafter filed another application for bail before the Ld. Trial Court which was dismissed by the learned ASJ (South) Saket Courts *vide* Order dated 28.10.2016.

l) Third bail application of the Petitioner herein was dismissed by the learned ASJ (South) Saket Courts *vide* order dated 08.05.2019.

m) This Court *vide* Order dated 02.07.2020 granted interim bail to the Petitioner for a period of 45 days on medical grounds which was further extended till 31.10.2020.

n) Fourth bail application of the Petitioner was dismissed by the learned ASJ (South) Saket Courts *vide* Order dated 13.04.2021.

o) This Court *vide* Order dated 27.05.2021 granted interim bail to the Petitioner for a period of 90 days on medical grounds. The Petitioner has now approached this Court by filing the instant petition for grant of regular bail. It is to be noted that the Petitioner herein surrendered before the hearing on grant of regular bail commenced.

3. Mr. Colin Gonsalves, learned Senior Advocate appearing for the Petitioner, has made the following submissions:

a) Mr. Gonsalves submits that the Petitioner has been in custody since 09.07.2012, which invariably means that the Petitioner has been an undertrial for over nine years. He relies on the judgement of the Supreme Court, i.e. Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, **(1994) 6 SCC 731** and states that the same is squarely applicable in the instant case as a result of which the Petitioner herein is entitled to bail after five years of remaining an undertrial, i.e. half of the minimum punishment prescribed under the statute. Mr. Gonsalves argues that the Ld. Trial Court,

while considering the bail application of the Petitioner herein, had failed to account for the law laid down by the Supreme Court. He further states that the continued incarceration of the Petitioner herein is a gross violation of his right to life and personal liberty under Article 21 of the Constitution of India.

b) The learned Senior Advocate appearing for the Petitioner further submits that the statement which was recorded on behalf of the Petitioner under Section 67 of the NDPS Act cannot form the basis for the incarceration of the Petitioner. He states that other than the disclosure statements of the Petitioner as well as co-accused/Paramjit Singh Gulati, there is no material available against the Petitioner. Mr. Gonsalves relies on the judgement of Tofan Singh v. State of Tamil Nadu, **(2013) 16 SCC 31** to substantiate the contention that mere statements of the accused recorded under Section 67 of the NDPS Act have no evidentiary value and, therefore, are inadmissible. He further states that the statements under Section 67 NDPS Act had been subsequently retracted by the Petitioner herein, along with that of the co-accused/Paramjit Singh Gulati, before the Ld. Trial Court on 04.08.2012.

c) Mr. Gonsalves, learned Senior Advocate appearing for the Petitioner herein, refers to Section 37 of the NDPS Act which entails the requirements for bail under the NDPS Act, and argues that the requirements have been satisfied in the instant case and that there is no bar or embargo on bail per se. Mr. Gonsalves cites Union of India v. K.A. Najeeb, **(2021) 3 SCC**

713, to submit that in that case, the Supreme Court had held that statutory restrictions like the one imposed by Section 43-D (5) of the Unlawful Activities (Prevention) Act, 1967, did not necessarily mean that the very ability of constitutional courts to grant bail would be ousted as the same would entail a violation of Article 21 of the Constitution of India. He states that as this judgement had been recently pronounced, the Ld. Trial Court had not been able to take the same into consideration while hearing the bail application of the Petitioner herein.

d) Mr. Gonsalves, learned Senior Advocate, submits that the complaint does not paint the Petitioner as a kingpin and that there is no element of conspiracy. He submits that the Petitioner herein was merely a forwarding agent and was not aware of the contraband material being concealed in the packages. He submits that the Petitioner is being falsely implicated in the instant case, and that no material, either narcotic substances or concealing material that was used to cover the substances, has been recovered from the office or the home of the Petitioner and that the same has been confirmed by witnesses as well as the IO. He further submits that only three mobile phones were seized from the Petitioner's residence as per the arrest memo dated 20.07.2012, and that a fourth Blackberry phone was added to this by the DRI in order to fabricate incriminating evidence against the Petitioner.

e) Mr. Colin Gonsalves, learned Senior Advocate appearing for the Petitioner, argues that chargesheet has been filed, along with

the supplementary chargesheet. He further submits that it has been nine years since the Petitioner has been in custody and that the same is a violation of the right to life and personal liberty of the Petitioner herein. Mr. Gonsalves informs this Court that there are more than 80 witnesses that are to be examined, and that only 42 witnesses have been examined by 13.04.2021, with the examination of 8 witnesses being deferred. He states that, therefore, it is expected that the trial will take another few years to conclude. He states that no useful purpose will be served if the Petitioner is kept in continued judicial custody. Furthermore, he states that the probability of the Petitioner fleeing from justice does not exist as he has roots in society and he is the sole breadwinner of his family, including his wife, children, aged parents and an unmarried sister.

4. *Per contra*, Mr. Satish Aggarwala, learned Senior SPP appearing for DRI, contends that the quantity that has been recovered, i.e. 151.980 kgs of ketamine hydrochloride, is a commercial quantity. He submits that in these circumstances, with the charges already being framed and the order of framing of charges having attained finality, the bar of Section 37 of the NDPS Act applies. He informs the Court that this Court has already rejected the bail applications of the Petitioner herein as well as the co-accused/Paramjit Singh Gulati on previous dates. Relying upon Daler Singh v. State of Punjab, **2007 (1) C.C. Cases (HC) 252**, the learned Sr. SPP submits that the concession of bail cannot be extended to foreign nationals who have been indicted under the NDPS Act for possession of extraordinary heavy contraband and that granting of bail in such cases would be against

the very spirit of the Act.

5. Mr. Aggarwala relies on the Section 67 NDPS Act statement of the Petitioner herein to submit that the Petitioner himself has admitted his role in the export of contraband to various countries. He submits that the Petitioner has confirmed that he used to receive payment of Rs. 2.5 lakhs to Rs. 3 lakhs per shipment for his involvement in the export of contraband. He further submits that the role of the Petitioner has been established from the disclosures made by him as well as the co-accused/Paramjit Singh Gulati pertaining to the export of 151.980 kgs of ketamine and how letters had been forged by the Petitioner himself. The learned Sr. SPP submits that the admissions of the Petitioner and his co-accused have resulted in the seizure of one more consignment of 300 kgs of ketamine dissolved in rose water at the godown premises. He states that the Petitioner was also actively involved in arranging fake IECs without the knowledge of person owning the said IEC and related documents for export in of the contraband.

6. Mr. Aggarwala, the learned Sr. SPP, submits that the contention of the Petitioner that the trial is taking an unduly long time is false. He states that there is no delay on the part of the prosecution and that this Court is assured that the trial will be concluded expeditiously. In view of these submissions, the learned Sr. SPP vehemently opposes the grant of bail to the Petitioner herein.

7. Heard Mr. Colin Gonsalves, learned Senior Advocate appearing for the Petitioner, Mr. Satish Aggarwala, learned Senior SPP appearing for DRI, and perused the material on record.

8. Grant or refusal of bail, in a case involving commercial quantity of contraband substances under the NDPS Act, is governed by Section 37 of

the NDPS Act. The same is reproduced as under:

> ***"37. Offences to be cognizable and non-bailable.-***
>
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*
>
> *(a) every offence punishable under this Act shall be cognizable;*
>
> *(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
>
> *(2)The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"*

9. A reading of Section 37 of the NDPS Act indicates that bail can be granted only when there are reasonable grounds for believing that the accused is not guilty of an offence and that he is not likely to commit any offence when released on bail. The parameters for grant of bail to an accused

have been laid down in a number of judgements of the Supreme Court. In Collector of Customs v. Ahmadalieva Nodira, **(2004) 3 SCC 549**, the Supreme Court had observed as under:

> "***6****. As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code.* ***The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.***
>
> *7. The limitations on granting of bail come in only when the question of granting bail arises on merits.* ***Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and***

circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....." (emphasis supplied)

10. Similarly, in Union of India v. Rattan Mallik, **(2009) 2 SCC 624**, the Supreme Court had held that while considering an application for grant of bail under the NDPS Act, the Court was not called upon to record a finding of "not guilty", but to see whether there was any reasonable ground for believing that the accused was not guilty of the offence(s) that he was charged with and further that he was not likely to commit an offence under the said Act while on bail. The relevant portion of the aforementioned judgement reads as follows:

> *"**12**. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".*
>
> ***13**. The expression "reasonable grounds" has not been defined in the said Act but means something more than*

prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail." (emphasis supplied)

11. In the instant case, the quantity of contraband recovered is 151.980 kgs of ketamine, which is a commercial quantity. In Gurdev Singh v. State of Punjab, **(2021) 6 SCC 558**, the Supreme Court had discussed the deleterious impact of narcotic drugs on society, and how the menace of drug addiction did not only have the ability of destroying the life of just one individual, but how it could destroy the lives of generations to come.

Therefore, the consequences of dealing of drugs and drug abuse can be experienced across the board, from causing economic issues to societal disintegration. The purpose of enacting the NDPS Act was to curb this menace, and this purpose must be borne in mind while considering the grant of bail pertaining to the NDPS Act.

12. However, it is also pertinent to note that the Petitioner herein was arrested on 20.07.2012. It has been nine years since he has been in custody. While remaining conscious of the fact that the gambit of drug trafficking must be deterred with stringent punishments, and that those who indulge in such nefarious activities do not deserve any sympathy, Courts must also not ignore the plight of the undertrials who remain languishing in jails as their trials are delayed with no end in sight. Deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution under Article 21, and is, therefore, unconstitutional to its very core. In such cases, in absence of the pronouncement of conviction, the process itself becomes the punishment. Nine years cannot be said to be a short period of time.

13. The Supreme Court, while deciding a petition pertaining to the delay in disposal of cases under the NDPS Act, had issued certain directions, subject to general conditions, in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (supra) which have been reproduced as follows:

> *"(i)Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the*

punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii)Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii)Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 3 1 and 31A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order."
(emphasis supplied)

14. As per Direction (iii) in the aforementioned judgement, where an undertrial accused has been charged with offence(s) under the NDPS Act which is punishable with minimum imprisonment of ten years and a minimum fine of rupees one lakh, then such an undertrial is to be released if he has been in jail for not less than five years. In the instant case, the

Petitioner has been charged with offences punishable under Sections 9A, 21, 23, 25A of the NDPS Act. With minimum imprisonment of 10 years as stipulated under these offences, an undertrial is to be released if he has been in jail for not less than five years. However, in the case herein, the Petitioner has been in custody for more than 9 years. Therefore, the petitioner is squarely covered by the aforementioned judgment.

15. Applying the law that has been laid down by the Supreme Court in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (supra) and flowing from Section 37 of the NDPS Act, this Court is of the opinion that the instant case is fit for grant of bail. This Court is, therefore, inclined to grant bail to the Petitioner herein, subject to the following conditions:

a) The petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount, one of them should be the relative of the petitioner, to the satisfaction of the Trial Court;

b) The petitioner is directed to deposit his passport with the Trial Court.

c) The Memo of Parties shows that the petitioner is residing at R/O 178, West Guru Anand Nagar, New Delhi- 110092. The petitioner is directed to reside at the same address. In case of any change of address, the petitioner is directed to inform the same to the Investigating Officer;

d) The petitioner shall report to the concerned Police Station twice in a week, that is, on every Wednesday and Firday at 10:30 AM, and the police is directed to release him by 11:00 AM after

recording his presence and completion of all the necessary formalities;

e) The petitioner shall not leave NCT of Delhi without the prior permission of the trial Court;

f) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;

g) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;

h) In case it is established that the petitioner has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the petitioner shall stand cancelled forthwith.

16. Be it noted that the observations made in this order are only for grant of bail and not on the merits of the case.

17. The application stands disposed of along with all the pending application(s), if any.

18. Let a copy of this order be communicated to the concerned Jail Superintendent.

SUBRAMONIUM PRASAD, J.

DECEMBER 21, 2021
Rahul